United States Supreme Court.

NO. 132, DECEMBER TERM, 1872.

THE CITY OF RICHMOND,
Plaintiff in Error,
v.
HENRY SMITH, for the use of
A. CLENDENIN.

Supplemental Brief of Defendant in Error.

The validity of these ordinances of the city of Richmond, and its liability for all liquors so destroyed have been adjudicated by the Court of Appeals of Virginia, adversely to the city. 18 Grattan 517, Jones & Co., vs. City of Richmond.

This being the decision of the highest court in the State, upon a mere local ordinance of one of its cities, is conclusive, and has been so frequently decided in this court that it is unnecessary to cite authorities.

The object the city of Richmond had in providing that the committees should give receipts for liquors destroyed, was simply to furnish a more easy proof and to give its citizens, whose property was thus forcibly destroyed, evidence in writing that the city would pay for it. If any committee failed to give a receipt for property destroyed by it under the authority of the ordinances of

the city, no court of Justice would hold that such party could not recover on proof of ownership of the liquors and their destruction by one of these committees, merely, because he had not been given a receipt. It is a remedial law and is to be liberally construed.

But even if the receipt was essential for recovery, it is too late now for the plaintiff in error to object. This court decided in the case of the *Marine Bank* v. *the Fulton Bank*, 2 *Wal.*, 252, that when a trial is had on the merits, and the error is not pointed out below, judgment will not be reversed even though the form of action be misconceived and the record shows a complete defence to the action as brought.

It is true that the first count of the declaration was demurred to, but the demurrer was overruled, (Record p. 5) and the defendant plead the general issue, thus abandoning the demurrer, and it ceased to be a part of the record. 8 Wal., 354, Young v. Martin.

The record brings up all the evidence which this court has held time and again, it will not review when the trial below was had before the court, a jury being waived. This evidence not properly being a part of the record, *non constat*, but what the judgment of the court was on the common counts set forth in the declaration.

The plaintiff in error conceding that the evidence which the court refused to hear was properly rejected, and which is the only matter excepted to, (Record p. 18,) there is nothing before the court, and it is respectfully submitted that the judgment should be affirmed.

WM. F. MATTINGLY,
Att'y for deft. in error.

Postponed
Motion Dany
Submitted
March 19.

Decided by
Justice Field

SUPREME COURT OF THE UNITED STATES.

No. ~~413~~ 178

LOUIS HANAUER, PLAINTIFF,

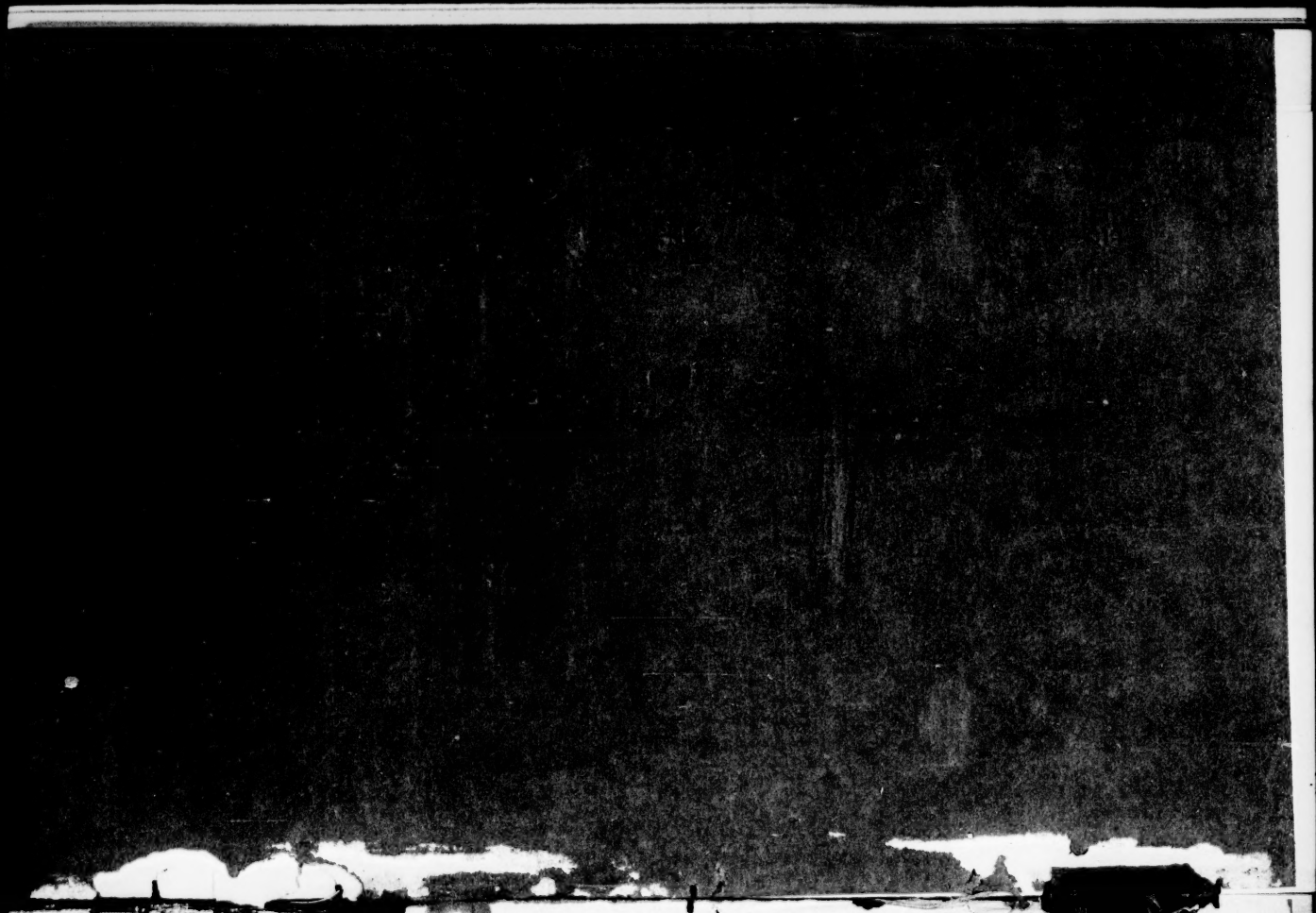
vs.

ALDEN M. WOODRUFF.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KANSAS.

FILED NOVEMBER 27, 1871.

Dec 21 1871



SUPREME COURT OF THE UNITED STATES.

No. 413.

LOUIS HANAUER, PLAINTIFF,

vs.

ALDEN M. WOODRUFF.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED 27TH NOVEMBER, 1871

1 LOUIS HANAUER
vs.
ALDEN M. WOODRUFF.

This case having been submitted to the court without a jury, by written agreement of the parties, and the court, having heard the testimony, finds the following facts:

1. The defendant made and delivered to plaintiff, at Memphis, in the State of Tennessee, on the 22d day of December, 1861, his promissory note, in writing, of which the following is a true copy:

$3,099.00.] MEMPHIS, TENN, *December 22d*, 1861.

Twelve months after date, if not sooner paid, I promise to pay Louis Hanauer, or order, the sum of three thousand & ninety-nine dollars, for value received, to bear interest at the rate of eight per cent. annum, from maturity until paid.

Given under my hand the day & date above written.

(Signed) A. M. WOODRUFF. [SEAL.]

2. The only consideration of said note was certain bonds issued
2 by an ordinance of the convention which attempted to carry the State of Arkansas out of the Federal Union by what is called the secession ordinance.

3. That these bonds were issued for the purpose of supporting the war, levied by the insurrectionary bodies then controlling the State of

Arkansas against the Federal Government, and were styled "war bonds" on their face, and the purpose of their issue was well known to both plaintiff and defendant.

4. Said bonds had, at the time of the transaction between plaintiff and defendant, a value below their par value on their face, say twenty-five per cent., at Memphis, and in Arkansas.

5. The war bonds received by defendant were not used or intended to be used by him in direct support of the war aforesaid, but were received by him to be used in the ordinary course of his business.

3 That at the time of giving the note sued on was executed, the war bonds mentioned in the record were used as a circulating medium in Arkansas, and at and about Memphis, in the common and ordinary business transactions of the people.

On these facts three questions of law arose, on which the judges of the circuit were divided in opinion, to wit:

1. Was the consideration of the note void on the ground of public policy, so that no action could be sustained on it in the Federal courts?

2. Was the consideration of the said note illegal under the principles of public law, the Constitution of the United States, and the laws of Congress, and the proclamations of the President relating to the rebellion which existed and was pending when the note was made?

3. If said bonds were a sufficient consideration to sustain the action, what was the measure of damages?

And the division of opinion of said judges on these questions is ordered to be certified to the Supreme Court of the United States.

(Signed) JNO. F. DILLON.
HENRY C. CALDWELL.

(Indorsed:) 166. Louis Hanauer v. Alden M. Woodruff. Certificate of division of opinion. Filed Octo. 14, 1871. Frank E. Wright, cl'k.

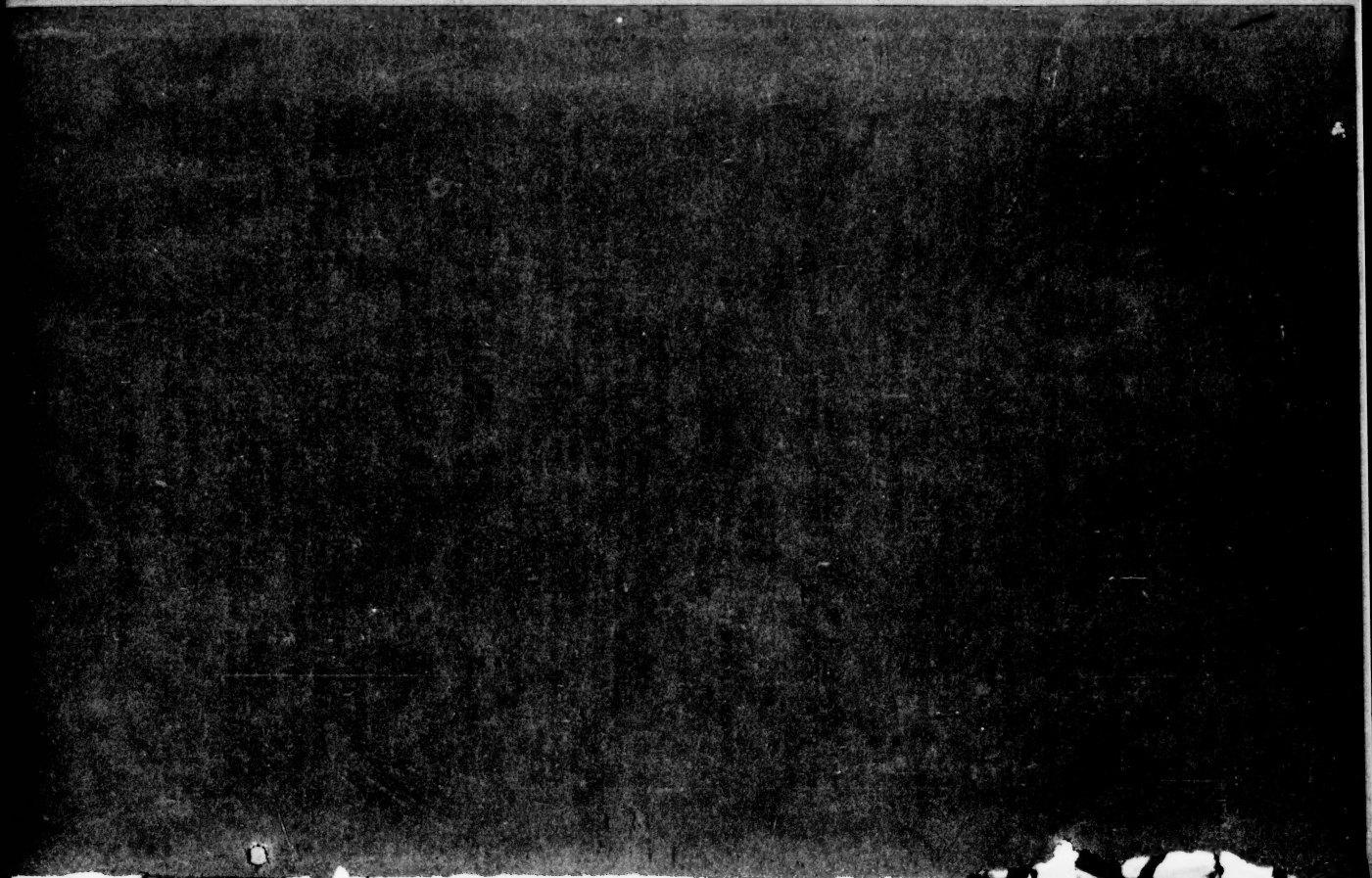
4 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Frank E. Wright, clerk of the circuit court of the United States for the eastern district of Arkansas in the eighth circuit, hereby certify that the foregoing writing annexed to this certificate is true, correct, and compared copy of the original, on file and remaining of record in my office, of the certificate of division of opinion in the case of Louis Hanauer vs. Alden M. Woodruff, in said court.

In witness whereof I have hereunto set my hand and the seal of said court this 19th day of October, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the United States of America the ninety-sixth.

Attest: [SEAL.] FRANK E. WRIGHT, *Clerk.*

(Indorsement on cover:) No. 413. Louis Hanauer, plaintiff, vs. Alden M. Woodruff. Certificate of division. E. Arkansas C. C. U. S. Filed 27 November, 1871.



Supreme Court United States.

DECEMBER TERM, 1872.

LOUIS HANAUER
vs.
ALDEN M. WOODRUFF. } No.

Certificate of Division in opinion between the Judges of the Circuit Court of the United States for the Eastern District of Arkansas.

ARGUMENT FOR HANAUER.

McGill & Witherow, Printers, 1107 E street, Washington, D. C.

Supreme Court of the United States.

AT THE DECEMBER TERM, 1872.

LOUIS HANAUER
vs.
ALDEN M. WOODRUFF. } No. —.

CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

ARGUMENT.

The record in this case presents briefly this state of facts:

Hanauer sued Woodruff in the circuit court of the United States for the eastern district of Arkansas, and, on issues regularly made up, the case was, by agreement of parties, submitted to the court; and after hearing the testimony, the court found the following facts:

1st. The defendant made and delivered to plaintiff, at Memphis, in the State of Tennessee, on the 22d day of December, 1861, his promissory note in writing, of which the following is a true copy:

"[$3,099 00.] MEMPHIS, TENN., *December* 22*d*, 1861.

"Twelve months after date, if not sooner paid, I promise to pay Louis Hanauer, or order, the sum of three thousand and ninety-nine dollars, for value received, to bear interest at the rate of eight per cent. per annum from maturity until paid.

"Given under my hand the day of date above written.

[SEAL.] "A. M. WOODRUFF."

2d. The only consideration of said note was certain bonds, issued by an ordinance of the convention which attempted

to carry the State of Arkansas out of the federal Union, by what is called the secession ordinance.

3d. That these bonds were issued for the purpose of supporting the war levied by the insurrectionary bodies then controlling the State of Arkansas against the federal Government, and were styled "war bonds" on their face, and the purpose of their issue was well known to both plaintiff and defendant.

4th. Said bonds had, at the time of the transaction between plaintiff and defendant, a value not much below their par value on their face, say ten per cent., at Memphis and in Arkansas.

5th. The war bonds received by defendant were not used, or intended to be used, by him in support of the war aforesaid.

6th. That, at the time the note sued on was executed, the war bonds mentioned in the record were used as a circulating medium, in Arkansas and at and about Memphis, in the common and ordinary business transactions of the people.

On these facts three questions of law arose, on which the judges of the circuit were divided in opinion, to wit:

1st. Was the consideration of the note void on the ground of public policy, so that no action could be sustained on it in the federal courts?

2d. Was the consideration of the said note illegal under the principles of public law, the Constitution of the United States, and the laws of Congress, and the proclamations of the President relating to the rebellion, which existed and was pending when the note was made?

3d. If said bonds were a sufficient consideration to sustain the action, what was the measure of damages?

The first and second propositions may be considered as one in fact, as they go to the consideration of the note entirely; and on behalf of Hanauer it is submitted, the note was based on a good consideration, and an action can be maintained on it in the federal courts.

While it is true these *war bonds* were issued to be used in carrying on the war against the United States, yet if the particular bonds obtained by Woodruff of Hanauer were not used or intended to be used in support of that war, the contract is not void, but stands upon a good and valid consideration. The court found (see fifth proposition) these bonds were not used or intended to be used in the prosecution of the war. To taint the contract, the intention to use the particular consideration must have existed on the part of both creditor and debtor. The issuing the same by the State of Arkansas can have no bearing here, unless Woodruff and Hanauer both participated, in making this contract, in the intention with which they were issued. The immorality or illegality complained of or pleaded must exist in the particular contract sought to be enforced. When this is established, then, as the common law has it, the contract is void; but as the civil law more thoroughly expresses it, the contract is not *clothed with rights of action.* (2 *Austin Juris.*, 1015, 1016.) That this is the true criterion, in judging of the consideration, is supported by weight of authority that is overwhelming. (*Parker* v. *Barker*, 23 *Ark.*, 390; *Phillips* v. *Hooker*, *Law Register*, *Philadelphia*, *for November*, 1867, *p.* 40 *et seq.*; *S. C.*, *Phil. Eq. Rep.*, *N. C.*, 193.) This last case decides almost the identical question here, and the reasoning of the Supreme Court of North Carolina in that case is unanswerable. (See, too, *Sedgwick Constitution*, 84, *and notes to* 91; *Utica Insurance Co.* v. *Cadwell*, 3 *Wend.*, 301 *and* 302; *Yeates* v. *Williams*, 5 *Ark.*, 684; *Holden* v. *Meggison*, 2 *Stew.*, *Ala.*, 175; *Greenwood* v. *Curtis*, 6 *Mass.*, 358; *Witherby* v. *Mann*, 11 *Johns.*, 518; *Smith* v. *Harris*, 3 *Sneed.*, *Tenn.*, 554. And see particularly *The Oneida Bank* v. *The Ontario Bank*, 21 *New York*, 496; *Sherfey* v. *Argenhight*, 2 *Am. Rep.*, 690; *S. C.*, 1 *Heiskell*, *Tenn.*, 198; 4 *Robinson Pr.*, *ch.* 87, 88, 89, *p.* 547 *et seq.*)

In the *St. Jago de Cuba*, 9 *Wh.*, 409, (5 *Cond.*, 631,) this court held the claims of seamen for wages, and of material-men for supplies, when the parties were innocent of all knowledge of or *participation* in the illegal voyage, good, and preferred to the claim of forfeiture on the part of the Government.

In *Armstrong* v. *Toler*, 11 *Wh.*, 258, (6 *Cond.*, 298,) this court ruled, that the contract must grow out of immediately or be connected with an immoral or illegal act to vitiate it; and if the promise be entirely disconnected with the illegal consideration or act, and is founded on a new consideration, it is good; and this though the party to whom the promise is made is the contriver and the conductor of the illegal act.

The same doctrine was laid down by this court in *Kennett* v. *Chambers*, 14 *How.*, 38, where the contract was for an illegal purpose, and showed this purpose on its face.

Decisions without number, in England and in this country, support this view of the matter. (*Smith* v. *Brumley*, 2 *Doug.*, 697, *and notes; Hodgson* v. *Temple*, 5 *Taunt.*, 181; *Simpson* v. *Bloss*, 7 *ib.*, 246, *note a; Bulmer's Case*, 13 *Ves.*, 313; *Brisbain* v. *Lestargett*, 1 *Bay*, *S. C.*, 113; *Merril* v. *Milchior*, 30 *Miss.*, 1 *George*, 516; *ib.*, 343, *and* 27 *Miss.*, 13; 1 *Parsons Cont.*, 365 *and* 580; 2 *ib.*, 252 *et seq.; Sedgwick Const.*, 396 *and* 400; *Brown* v. *Tarkington*, 3 *Wall.*, 377; *Benjamin, Sales*, 378 *and* 417; *McBlair* v. *Gibbs*, 17 *How.*, 235; *Miller* v. *Gould*, 38 *Georgia; Blalock* v. *Phillips*, *ib.; Martin* v. *Hortin*, 1 *Bush., Ky.*, 629 *and* 636. This last case is very expressive. *Taylor* v. *Truley* 33 *Md.*)

The principle is not peculiar to this country and England at all. (1 *Domat, p.* 513, *paragraphs* 1266 *and* 1267; 1 *Pothier Obl.*, 126 *and* 127; 2 *ib.*, 1 *and* 16.)

Woodruff got the bonds and used them legitimately, and they were worth to him not much less than their face. He did not give them to the war, or use them for the war, nor did he intend to do so. To him they were as money. He should not be heard to say they were not money. (*Pickard* v. *Bankes*, 13 *East*, 20; *Mason* v. *Waite*, 17 *Mass.*, 563.)

Illegal though they may have been in the issuing, yet a party using them to his benefit cannot profit by the loss of another in this way, nor more especially will he be permitted to do so in alleging his own short-coming towards the Government. (2 *Pothier*, 271 *and* 334; *Walton* v. *Shelby*, 1 *T. R.*, 296; *Jordaine* v. *Lashbrook*, 7 *ib.*, 601.)

Recovery was denied in *Hanauer* v. *Doane*, 12 *Wall.*, 342, because the notes sued on were given for goods sold in aid of the rebellion, both buyer and seller having knowledge of the use intended to be made of the goods. But no such question arises here, as these war bonds were not used in aid of the rebellion, but to make Woodruff live and prosper. The Supreme Court of Louisiana has settled the general principle, in the matter of renting a dwelling for the purpose of keeping a brothel, upon a basis broader than is necessary to support this action. (*Lyman* v. *Townsend*, *Am. Law. Reg.*, September, 1872, p. 547.)

If it was, then, illegal or criminal, or against public policy, that Woodruff should live, then this contract may have been void. If it was promotive of morals or public good or legal that Woodruff should then have died, probably this contract is invalid, for he used this *money* for his own support. It was of great value to him. The law will not allow him now to repudiate it. But the question has now been repeatedly settled as to the money called *Confederate money* in the States. (*Martin* v. *Hortin*, *sup.*; *Phillips* v. *Hooker*, *sup.*; the two cases in 38 *Georgia*, *sup.*; 2 *Am. Law Review*, 501, 568, 570, *and* 571; *Law Register*, *March*, 1869, *p.* 166; *Robinson* v. *Life Ins. Co.* But more in point still are *Evans* v. *Richmond* and *Mrs. Keppel's Case*, both decided by the *Chief Justice* in the Virginia circuit.

But the finding by the court the fact stated under the sixth head, that these bonds were used as a circulating medium among the people within the Confederate lines at and about Memphis, and had with them much value, brings the case as directly as can be within *Thorington* v. *Smith*, 8 *Wall.*, 1. The doctrine of that case leaves nothing to

discuss here. Indeed, without *Thorington* v. *Smith*, upon this general principle, this court has fully recognized as law all that is claimed for Hanauer, and places that recognition upon the very cases already cited in this argument. (*Thomas* v. *City of Richmond*, 12 *Wall.*, 349.)

It may be asserted, then, without offending against morals, public policy, or law, that this contract is "*clothed with the rights of action*," and that an action can be sustained on it in the federal courts.

2. *What is the measure of damages?*

This question is almost solved in determining the other. The parties made their own contract, and used words to suit their own intention and to express their own meaning, and there is no allegation of fraud or deception at all; and the law does not allow the written contract to be thus altered when there is no charge of fraud. (*Roane* v. *Greene et al.*, 24 *Ark.*, 210.) The language of the contract is not uncertain or ambiguous, and therefore it cannot be explained away on the pleas filed. (*Story on Con.*, 14; *Jackson* v. *Lill*, 11 *Johns.*, 201; *Bond* v. *Haas*, 2 *Dallas*, 133.) This note was given for so many dollars—and everybody knows what is meant by *dollars*—and nothing less than dollars, as contracted for, will discharge this contract. (*Johnston* v. *Hedden*, 2 *Johns. Cases*, 274; *Story on Prom. Notes*, 17 *and* 19; 2 *Meigs's Dig.*, *p.* 770, *sec.* 1345; *State Bank* v. *Crease*, 1 *Eng.*, 6 *Ark.*, 295; *Mrs. Keppel's Case*, *sup.*) It may be that Woodruff contracted to give more than the bonds were worth, when he agreed to give so many *dollars*, with interest. But in law a man has the right to give as much as he pleases for an article. It was his own contract; and if he had agreed to give ten times more than he did, he would be held to his agreement, unless he pleaded and proved fraud on the part of Hanauer. To permit him to pay off this note at less than his contract binds Woodruff to do would be making for him a new contract altogether, which the law *will* not do, and which the courts, in enforcing the law, *ought* not to do.

Woodruff does not pretend here that he was to have paid Hanauer in *war bonds*, in *Confederate money*, or in anything but *dollars*, as was shown in *Thorington* v. *Smith*, *supra*. It was for this reason, among others, that this court allowed the computation of *Confederate* money in *Thorington* v. *Smith*. This reason does not exist here, for the contract is wholly different from the one in that case. As before said, there is no ambiguity to explain, as there was in *Thorington* v. *Smith*. And in that case this court gave a reason again for allowing this, which does not exist here. That contract being payable in Confederate notes, and those notes being payable at a day "*which has not arrived and never can arrive*," this court permitted their value in real money or currency to be proved. But here the contract was not payable in that kind of money, or in *war bonds* either, but in so many *dollars*. The meaning, then, of this court in that case, so far from permitting an allowance less than the face of the contract, rejects it, and holds the parties to their agreement as made by them. The contract here is its own best interpreter; and all the *dollars* that we know anything of in this country, in law, are gold and silver dollars, and this has been so ever since the adoption of the federal Constitution. (*Bronson* v. *Rodes*, 7 *Wall.*, 256.) But if it should be held that, by virtue of the "*legal-tender*" act, anything but gold or silver could discharge this debt, it must be for the amount of the face of the note and interest, as stipulated, in the United States currency. In other words, this debt is to be paid in currency now, at the face of the note, with eight per cent. interest, in like money, from the 22d day of December, 1862, as the contract reads.

It is a fair and legitimate contract, and therefore Hanauer is entitled to recover on it the $3,099, with eight per cent. interest from one year after its date; that is, 22d *December*, 1862. This is the contract, and no other can be substituted in place of it.

Respectfully,

A. H. GARLAND,
Counsel for Hanauer.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~365.~~ 135

BENJAMIN F. FLANDERS, DEPUTY GENERAL AGENT UNITED STATES TREASURY DEPARTMENT, PLAINTIFF IN ERROR,

vs.

JOHN P. TWEED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 30, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 365.

BENJAMIN F. FLANDERS, DEPUTY GENERAL AGENT UNITED STATES TREASURY DEPARTMENT, PLAINTIFF IN ERROR,

vs.

JOHN P. TWEED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 United States circuit court, fifth circuit and district of Louisiana.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

Petition.—Filed May 28th, 1866.

To the honorable the judges of the United States circuit court for the sixth judicial circuit.

The petition of John P. Tweed respectfully shows and states, that your petitioner is a citizen of the State of Ohio; that Benjamin F. Flanders, who is a citizen of the State of Louisiana, is justly indebted to your petitioner in the sum of thirty-nine thousand three hundred and sixty dollars, for this, to wit:

That, on or about the sixth day of March, eighteen hundred and sixty-six, your petitioner was the owner of four hundred and ninety-five bales of cotton, then being in the city of New Orleans.

That, at said time, Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States, unlawfully seized and took said cotton into his possession, and unlawfully detained the
2 same until the fifteenth day of May, of said year, when your petitioner, under and by virtue of two several writs of sequestration, in two suits instituted in this honorable court, wherein your petitioner is plaintiff, and the said Flanders defendant, obtained possession of said cotton; that in his petition in each of said suits to recover possession of said cotton, your petitioner expressly reserved the right to institute suits to recover damages for the seizure and detention of the same.

That, during said period, from said sixth day of March, to said fifteenth day of May, said Flanders unlawfully withheld from your petitioner's possession his said cotton, during which period the value of said cotton declined to the amount of thirty thousand dollars.

That, in consequence of said unlawful detention of said cotton, your petitioner was compelled to pay, and did pay, interest to the amount of one hundred and sixty dollars, insurance to the amount of two hundred dollars, and storage to the amount of one thousand dollars. That, by reason of said suits which your petitioner was compelled to institute, and did institute, to recover possession of his said cotton, and in the prosecution of the same, your petitioner was compelled to pay,
3 and did pay, counsel fees, clerk's fees, and marshal's fees, to the further amount of seven thousand dollars.

That, while said Flanders was wrongfully in possession of said cotton, and was wrongfully detaining the same from the possession of your petitioner, he caused fifty bales of the same to be sent from the warehouse wherein said fifty bales were stored, and to be rebaled, whereby said fifty bales was diminished in weight, and was diminished in value, in the further sum of one thousand dollars.

Wherefore your petitioner prays that said Benjamin F. Flanders may be cited to answer this petition; that, after due proceedings, judgment may be rendered in favor of your petitioner, and against the said Benjamin F. Flanders, for the sum of thirty-nine thousand three hundred and sixty dollars, besides the costs of this action, and for all general and special relief.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Att'ys for Petitioner.

[50-c. int. rev. stamp affixed & cancelled.]

REC. 365—1

United States circuit court.

Answer.—Filed February 7th, 1867.

4 JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3899.

And now comes B. F. Flanders, defendant, and admits that, at the time stated in petition, he was deputy general agent of the Treasury Department of the United States; and, further answering, denies all and singular the allegation' in plaintiff's petition contained, and denies all indebtedness to said plaintiff, and prays to be hence dismissed, with costs, and for all general relief.

(Signed) J. S. WHITAKER.
" HORNOR & BENEDICT,
Att'ys for Def't.

Hearing and order.—Cause continued.—Extract from the minutes of Wednesday, January 29th, 1868.

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3899.

This cause came on for trial—Sullivan, Billings & Hughes for plaintiff; J. S. Whitaker and D. Stuart for defendant—when, after hearing the pleadings and the evidence, the case is continued till 8th proximo, at 11 a. m.

5 U. S. circuit court.

Answer of U. S. district attorney in behalf of B. F. Flanders as a Government officer.—Filed February 3d, 1868.

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3899.

And now comes Sam. H. Torrey, district attorney of the United States, and says that Benjamin F. Flanders, an officer of the United States, described in plaintiff's petition as deputy general agent of the Treasury Department of the United States, has been sued in this behalf for damages under and by virtue of certain seizure of cotton made by him in said capacity, and the detention thereof.

Wherefore he now appears for said B. F. Flanders, as a Government officer, and denies all and singular the allegations in said petition contained. He also prays for all general and equitable relief.

(Signed) SAM. H. TORREY,
U. S. Att'y.

Document annexed to said answer, and filed February 3d, 1868, dated Washington, Feb. 3d, 1868, received at New Orleans, La., Feb'y 3d, 1868.

To U. S. District Att'y Torrey:

Appear for Flanders as a Government officer in suit Tweed

6 against Flanders for thirty-nine thousand ($39,000) dollars damages.

(Signed) H. McCULLOCH, *Sec'y.*

Order.—Caw'e continued.—Extract from the minutes of Saturday, February 8th, 1868.

JOHN P. TWEED
vs. } No. 3899.
B. F. FLANDERS.

By consent of counsel this cause, fixed for this day, is continued till Wednesday, 12th inst., at 11 a. m.

Order.—Cause continued.—Extract from the minutes of Thursday, February 13th, 1868.

JOHN P. TWEED
vs. } No. 3899.
B. F. FLANDERS.

This cause came up agreeably to adjournment—Sullivan, Billings & Hughes for plaintiff; U. S. attorney, Whitaker and Stewart, for defendant—

When, after hearing further evidence and argument in part, the cause is continued till to-morrow at 11 a. m.

Hearing and submission of cause.—Extract from the minutes of Friday, February 14th, 1868.

JOHN P. TWEED
vs. } No. 3899.
B. F. FLANDERS.

7 This cause came up again—Sullivan, Billings & Hughes for plaintiff; U. S. attorney, D. Stuart and J. S. Whitaker for defendant—

When, after hearing further argument, the court took time to advise.

United States circuit court, fifth circuit and district of Louisiana. November term, 1867.

Judgment from judgment docket.

NEW ORLEANS, *Wednesday, February 26th,* 1868.

Court met pursuant to adjournment—present, Hon. E. H. Durell, district judge.

JOHN P. TWEED
vs. } No. 3899.
B. F. FLANDERS.

For reasons orally assigned by the court, it is ordered, adjudged and decreed that John P. Tweed do have and recover from the defendant, Benjamin F. Flanders, the sum of thirty-six thousand nine hundred and

seventy-six dollars and 33 cents, with 5 per cent. interest thereon, from judicial demand till paid, and costs of suit.

Judgment rendered February 26th, 1868. Judgment signed March 11th, 1868.

(Signed) E. H. DURELL, *Judge.*

8 In the circuit court of the United States for the fifth judicial circuit and district of Louisiana.

Petition and order for writ of error.—Filed March 12th, 1868.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

To the hon. the circuit court of the United States:

The petition of Benjamin F. Flanders, sued in this behalf as deputy general agent of the Treasury Department of the United States, respectively shows that he is aggrieved by a final judgment rendered against him in this cause, and is informed that there is error to his prejudice in said judgment; that he is ordered by the Secretary of the Treasury of the United States, on behalf of the Government thereof, to prosecute a writ of error in this case with the object of having the decision of this court reviewed in the Supreme Court of the United States.

Wherefore he prays that a writ of error be allowed him, returnable on the first day of the next term of the Supreme Court, and that the same may operate as a supersedeas herein, without bond, obligation, or security being demanded.

9 And your petitioner will ever pray, &c., &c.

(Signed) SAM. H. TORREY,
U. S. Att'y.

(Signed) J. S. WHITAKER,
" D. STUART,
Special Counsel.

Order.

A writ of error, to operate as a supersedeas, is allowed in this case, as prayed for, and, according to law, returnable to the Supreme Court of the United States on the first Monday of December next, the United States being dispensed from giving bond in judicial proceedings.

March 12th, 1868.

(Signed) E. H. DURELL, *Judge.*

Circuit court of the United States for the district of Louisiana.

Judge's certificate.—Filed May 13th, 1868.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

In pursuance of the 8th section of the act of Congress, approved July 28th, 1866, extending the provisions of the 2nd, 3d, and 4th sections of the act of March 2nd, 1833, and of the 12th section of the act of March

3d, 1863, to cases arising against any officer of the United
10 States by reason of any act done under authority or colour of the act of March 12th, 1863, or the act of July 2nd, 1864: provided, that such acts done, or proceedings had, under the two last acts aforesaid, or under color thereof, shall have been done and had under the authority or by the direction of the executive Government of the United States. The undersigned certifies in this suit, wherein, on the 11th day of March, 1868, the plaintiff, by the final judgment of this court, recovered the sum of thirty-six thousand nine hundred and seventy-six $\frac{33}{100}$ dollars, with his costs of suit, which are taxed at the sum of $96 35; that defendant acted under the directions of the Secretary of the Treasury.

(Signed) E. H. DURELL, *Judge.*

Amended and supplemental answer.—Filed Feb'y 14th, 1871.

Circuit court of the United States for the district of Louisiana.

JOHN P. TWEED
vs.
B. F. FLANDERS, DEPUTY GENERAL AGENT of the United States Treasury Department.

No. 3899.—Amended and supplemental answer.

11 And now comes B. F. Flanders, special deputy general agent of the United States Treasury Department, defendant herein, by J. R. Beckwith, United States attorney for the district of Louisiana, appearing herein for said defendant, by lawful direction and authority, and by leave of the court for that purpose first had and obtained, for amended supplemental and further answer and plea to said plaintiff's petition herein, saith that said plaintiff ought not to further have and maintain his said action against this defendant, for he saith that, at and during all the time and times in said petition mentioned and referred to, said defendant was an officer and agent of the United States of America, to wit: A deputy general agent of the Treasury Department thereof, duly authorized, and that all and singular the goods, chattles, cotton, and property in said petition mentioned and referred to, were then and there, to wit, before and at the time and place in said petition mentioned, and before and at the time of the issuance and execution of the writ of sequestration issued from this court, by virtue of which said property and cotton was wrongfully taken from the possession of the United States and of this defendant, were so in the possession, custody, and control of this defendant, and so held in his custody and control by the official act and authority of this defendant, done and per-
12 formed as such officer and agent as aforesaid, in the administration of acts of Congress relating to States of the United States in insurrection and rebellion against the lawful Government of the United States, or to persons and property in said insurrectionary States, to wit: An act of Congress, approved March 12th, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," and an act approved July 2d, 1864, entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection," and of other acts of Congress relative to said insurrectionary States or persons or property therein, and in virtue of and under color of said acts of Congress, and in the exercise of his said office and agency as

aforesaid. And he saith that all and singular all of the property and cotton in said petition mentioned and referred to at the time when said plaintiff caused the same to be unlawfully seized, sequestered, and taken into the custody of the officer of this court by virtue of the said writ of sequestration—not by virtue of possession thereof—by this defendant as such officer and agent as aforesaid, by the authority and under
13 the color of the acts of Congress aforesaid, in the due and actual custody, control, absolute possession of the Government of the United States of America, by reason whereof and of the law, said property and all and every part, parcel, and portion thereof, then and there was beyond the lawful reach and effect of said alleged writ of sequestration or any other like writ issued from the court, and that the issuance and execution of said writ of sequestration, and the taking of said property into the possession of the said officer of this court, under the pretended authority of said alleged writ of sequestration, was, in all things and respects, an act of lawless and unjustifiable trespass and violence. And said defendant further saith that all and singular the matters, acts, and omissions, to wit, whereof this defendant is, in said plaintiff's petition charged, as therein complained of, the alleged holding said property and cotton therein described, in the possession of this defendant, and his refusal and omission to yield up and release the same to said plaintiff, as in said petition charged and complained of, were then and there in all respects, acts done and acts omitted to be done by said defendant, not in his private character and capacity, but in the exercise of his said office and agency, and in the official character and capacity of agent and officer as aforesaid, done and performed by virtue
14 and under color of and in the administration of the acts of Congress aforesaid; all of which said defendant is ready to verify.

Wherefore, and by reason of the premises, and by reason of the statutes of the United States of America in such case made and provided, said defendant saith that this court is now, and in all things and at all times has been, without jurisdiction of or about or concerning the matters complained of and set forth in said plaintiff's petition, but the sole and exclusive jurisdiction thereof is now, and at all times has been in the Court of Claims.

Wherefore, said defendant prays judgment against said plaintiff, that said action be dismissed, with costs and general relief.

(Signed) J. R. BECKWITH,
U. S. Dist. Att'y, for Def't.

Order.

Let this amended and supplemental answer be filed.
Febr'y 14, 1871.
(Signed) W. B. WOODS, *Judge.*

Hearing and continuance.—Extract from minutes.

NEW ORLEANS, *Wednesday, May 10th*, 1871.

Court met pursuant to adjournment—
15 Present, Hon. E. H. Durell, dist. judge.

JNO. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

This cause was resumed, and the following jurors were sworn in addition to the 9 already empanelled.

10. A. Tertron. 11. E. C. Payne. 12. J. W. Labouisse.
And the jury being now complete, the trial proceeded, and, after hearing the pleadings and evidence the cause is continued till to-morrow at 11 a. m.

Order of continuance.—Extract from minutes, April term 1871.

NEW ORLEANS, *Saturday, May 13th*, 1871.

Court met pursuant to adjournment—
Present, Hon. E. H. Durell, district judge.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

In this case by reason of the illness of one of the jurors it was agreed that the same be continued till Monday 15th inst., at 11 a. m.

Submission of cause.—Extract from minutes, Monday, May 15th, 1871.—*April term* 1871.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

16 This cause was resumed, all the jurors having made appearance except John Deeves, who is reported as still sick.
Whereupon the counsel agreed to dismiss him from the consideration of the case, and to try the same with the 11 jurors present, and the trial proceeded, and after hearing further evidence and argument, and receiving a charge from the court, Aristide Cavelier was appointed foreman of the jury, and they retired to consider on their verdict. At half past 4 p. m. his honor adjourned the court, and the counsel agreed that the jury may, in case of an agreement, deliver to the clerk a sealed verdict, and be present next morning at the opening of the court, at the reading of the same, and accordingly it was so ordered by the court.

Verdict.—Extract from the minutes, Tuesday, May 16th, 1871, *April term*, 1871.

JNO. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

The jury, having delivered to the clerk a sealed verdict and being now present in open court, the same was opened and read, and it is as follows, to wit:

NEW ORLEANS, *May 15th*, 1871.

The jury in the within suit gives the verdict as follows: In
17 favor of damages for plaintiff as below:

For decline in cotton	$6,994 35
" insurance premiums	160 00
" lawyer's fees	6,000 00
" storage	1,000 00
" clerk's & marshal's fee	1,126 13
	15,280 48

With legal interest from March 21, 1866, to date, on all the above items except the one for lawyer's fees.

(Signed) A'DE Z. CAVELIER, *Foreman.*

Whereupon it is ordered that the verdict be recorded.

Defendant's bill of exceptions.—Filed May 16th, 1871.

Circuit court of the United States, in and for the district of Louisiana, of the April term thereof, A. D. 1871.

JOHN P. TWEED *vs.* BENJAMIN F. FLANDERS. } No. 3899.—Bill of exceptions.

Be it remembered that, afterwards and upon the trial of the case of John P. Tweed vs. Benjamin F. Flanders, styled in the petition herein deputy general agent of the Treasury Department of the United States, numbered 3899 of the docket of said court, before the Hon. Edward
18 H. Durell, district judge, holding the said circuit court, and a jury, the said plaintiff, to maintain and prove his petition, was himself produced, and sworn and gave his testimony in his own behalf to the jury, and while he was so on the witness stand, giving his testimony was interrogated as to his ownership and title to the cotton described in the said petition herein, and responded and testified as follows, in response to interrogation' then and there propounded to him concerning his said ownership and his interest in this suit.

Q. Did you own all this cotton yourself?

A. Not individually; I did not.

Q. Who did own it?

A. My partners in my business house at Cincinnati; Weed & McKee had an interest here, and Scott, Cage & Co. Who these companies are composed of I cannot tell you, but I had the business management.

Q. How much of an interest did they have in *in*?

A. That would require some little time to figure out. The partnership of my house at home would have to make that out. Some partners had more than others, according to what they represented. I represented Tweed and Andrews, and we had a half interest; Scott & Cage a fourth, and Weed & McKee a fourth, but I was manager of the whole business.

Q. You have only one-half interest?

19 A. That's all.

Q. What interest have you in the firm of Tweed & Andrews?

A. At this time less than half, and more than one-third.

Q. What interest then?

A. I think larger than it is now. I don't know exactly what it was then, but it was larger.

Q. They were all interested in this contract?

A. Yes, sir; and furnished a portion of the money in proportion to their interest.

Q. A portion of the loss was theirs?

A. I suppose when the thing comes to be settled up it will be found out. The concern is not closed yet.

Q. This transaction has never been settled up between the parties to it?

A. They have their contingent interest in the proceedings before this court.

Q. An interest in this suit?
A. Yes, sir.
Q. You yourself have only got a quarter interest?
A. Something like that.

Re-direct examination:

Q. You stated that these parties had an interest with you in the result of this enterprise. State what their interest was. Who owned the cotton?

20 A. I was the entire manager of the whole cotton. The title rested in me. They only had an interest in the adventure.

By the defense:

Q. It was a partnership affair according to their interest in it?
A. Yes, sir.
Q. They furnished a proportionate amount of money?
A. I say we all had a share in the final result, but the whole management rested with me. They had no advice or control over the business. The' had merely an interest in the result.
Q. Was not a partnership entered into and money advanced to carry out this contract?
A. Yes, sir.
Q. Had you any communication after you got up there—(to Shreveport?)
A. Yes, sir.
Q. How?
A. By Mr. McKee.
Q. He represented?
A. Weed & McKee.
Q. Who else?
A. Mr. Scott.
Q. One of each firm?
A. Yes, sir; but they were not consulted, or did not know of these purchases at the time I made them. They were up there at the time, but I had the whole supervision of the matter. The cotton was paid for by me.

21 By the plaintiff:

Q. Had anybody a right to possess or control this cotton?
A. No one but myself until Mr. Flanders assumed it.
Q. No one but yourself had a right to the control and possession of this cotton. That was the understanding between you and these men when they sold the cotton, and you were to apportion their interest?
A. Yes, sir; that's all—profits or losses.

That the defendant, by virtue of the record thereof, proved that the said firm of C. A. Weed & Co., of New Orleans, referred to in said testimony, surrendered all of their property, as well the property of their firm as of the individual members thereof in proceeding in bankruptcy under the provisions of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867, and on the fifth day of May, A. D. 1868, obtained from the district court of the United States for the district of Louisiana, a discharge from all debts, provable under said act, and that the said C. A. Weed & Co. surrendered and transferred to their

22 assignee in bankruptcy one E. E. Norton, their one-quarter interest in all of said cotton, as well as their interest in this suit;

that the said plaintiff was not the assignee in bankruptcy in said proceedings of said C. A. Weed & Co.

And further produced evidence tending to show that the said firm of Scott, Cage & Co., referred to in said testimony as having one-quarter interest in said cotton and in this suit, a firm formerly doing business in the city of New Orleans, in the State of Louisiana, had long since ceased to exist as a co-partnership, and tending to show that the said firm of Scott, Cage & Co. was insolvent. It was, also, in proof before the jury that three-fourths of the cotton described in the plaintiff's petition, to wit, 372 bales, had been received by the plaintiff in a suit in the court against the defendant, which record was in evidence. And after all of the testimony, produced by both plaintiff and defendant, had been offered, and plaintiff and defendant had rested, the defendant, by his said attorney, moved the court for judgment against the plaintiff as in case of non-suit, for the reason that the evidence of the plaintiff
23 failed to disclose a right to maintain this action, or stand in judgment herein, and that the testimony of plaintiff failed to show any individual property in the cotton described in the petition herein, or any individual seperate right of action for the recovery of damages, and also disclosed a want of jurisdiction in the court to hear and determine the controversy involved in this action between the real parties in interest therein as described by plaintiff's own testimony given in the cause, which said motion the court then and there overruled and refused; to which said ruling and decision of the court, in this respect, the said defendant, by his counsel, did then and there except. That afterwards, and before the jury retired to deliberate on their verdict, the said defendant, by his said counsel, requested the court to charge and give to said jury, as his opinion, the following charges in writing, numbered 5, 6, 7, & 8 respectively.

5th. "If the jury believe from the evidence that Tweed, the plaintiff, was not the sole owner of the cotton described in the plaintiff's petition, but that he was only an owner of an undivided joint interest therein which he held in common with other persons, either C. A. Weed
24 & Co., or Scott, Cage & Co., or other persons then and in that case, all the persons or copartnership owning any interest in said cotton should have been made plaintiffs in the suit with Tweed, the plaintiff, and the jury must find a verdict for the defendant." Refused.

6th. "If the jury believe from the evidence that other persons than the plaintiff were joint owners with him, and were jointly interested with plaintiff in the venture of buying and sending the cotton described in the plaintiff's petition to market, then in that case the right to recover damages growing out of any wrong or injury done to said cotton or to the value thereof, if it existed at all, was and is fully vested in all of the owners of said cotton and is not susceptible of division, and Tweed, as one of the joint owners thereof cannot maintain an action to recover in his own name all the damage or loss which he alleges was the result of the acts of the defendant complained of in the petition herein." Refused.

7th. "If the jury believe from the evidence that the plaintiff in this case was not the sole owner of the cotton described in
25 the plaintiff's petition, and that he only owned a fractional joint interest therein and the damages claimed by him in this case would, if recovered, belong in right to him and other persons in fractional proportions of joint ownership, the plaintiff has failed to establish the material allegations of his petition and cannot recover." Refused.

8th. "If the jury believe from the evidence that the plaintiff only had

a joint fractional interest in the cotton described in plaintiffs' petition and that he held that interest in partnership with his partners in business in Cincinnati, then and in that case he cannot even recover his proportion of any damages claimed in the petition without his partners join with him in this suit, as he cannot in his own name recover any demand of the character described in the petition, due to him and his partner as co-partners in actual co-partnership." Refused.

Each and every of which said respective charges and directions the said judge, did then and there refuse to give to the jury as so requested.

And in refusing to so instruct the jury as requested and in connection with his said refusal to give to the jury the instruction
26 above set forth numbered 5, the said judge did orally deliver to the said jury as his opinion and instructions the following:

"I refuse that instruction; and I will here say I am surprised Mr. Attorney should have presented it here, at this time and in this form, when, after the closing of the evidence on both sides in this case he made a motion for a non-suit on the very ground set forth in this instruction: That it had come out in the evidence that other parties besides Tweed had an interest in this cotton. I refused the motion and understood the district att'y to take an exception to that ruling. I refused it on the ground, that the well-settled principle of law with regard to such transactions was that where two, three, or more persons joined together to do a certain business, as in this case to buy cotton, and where they all put their affairs in the hands of one person, and none of the other partners are to be known therein to the community, that person has the right to purchase, has the right to make a contract, has the right to sue on
27 such contract, aad may be sued on such contract; and it is not necessary to make any other person a party to such suit. Therefore I refuse the 5th instruction."

And the said defendant, by his said counsel, did then and there except to the ruling and decision of the said judge in refusing to give to the jury the said instructions so asked by the defendant, and refused by the court as aforesaid, and did so except seperately to the refusal to give each and every of said instructions so asked as aforesaid, and did also except to the said charge of the said judge so given to the jury, in connection with his said refusal, to give the said instructions, numbered 5, as above given and set forth in the bill of exceptions: that, after deliberating on their verdict, the said jury returned into court and rendered a verdict against the defendant, as appears by the record thereof; and, inasmuch as the matters above set forth do not appear by the record of said verdict, the said defendant, by his said attorney, did then and there tender to the court this his bill of exceptions in that behalf, and pray that the same might be signed and sealed and made a part of the record. And it is done accordingly.

(Signed) E. H. DURELL, *Judge.*

28 *Rule.—Extract from minutes of Wednesday, May 17th,* 1871.

JNO. P. TWEED *vs.* B. F. FLANDERS. } No. 3899.

On motion of J. R. Beckwith, U. S. att'y, for defendant, it is ordered that the plaintiff show cause, on the 24th inst., at 11 a. m., why an order should not be made in this cause arresting judgment on the verdict of the jury as rendered in this case, on the grounds filed.

Grounds for arrest of judgment.—Filed May 17th, 1871.

Circuit court of the United States, district of Louisiana.

J. P. TWEED
vs.
B. F. FLANDERS, DEPUTY GEN'L AGENT. } No. 3899.

On motion of J. R. Beckwith, U. S. att'y, for defendant, it is ordered that the plaintiff show cause, on Wednesday, 24th May, 1871, at 11 a. m., why an order should not be made in this cause arresting judgment on the verdict of the jury, as rendered in this case, for the following reasons:

29 1st. By plaintiff's own showing, by the record and proceedings here, this court is without jurisdiction to hear and determine the matters complained of in said plaintiff's petition.

2nd. That the verdict is invalid and void from the conduct of the jury; that, when the jury retired to deliberate on their verdict, they were permitted to take with them into their room the entire papers and record in the case, among which papers were documents which had been offered and produced in evidence on a former trial of the cause, but which were not produced or read in evidence on this trial; that, among other things, the jury, when they retired to their room to deliberate, took with them the deposition of J. P. Tweed, the plaintiff, which deposition was taken under commission and read on a former trial, but was not read upon the present trial, the said Tweed being present and testifying orally.

Marshal's return on foregoing.

Received, May 18th, 1870, by the U. S. marshal, and on the same day served a copy hereof on E. C. Billings by handing it to him in
30 person at 80 Custom-house street.

(Signed) S. W. REED,
D'y U. S. Marshal.

MAY 24TH, 1871.

Affidavit of J. R. Beckwith, U. S. dist. att'y.—Filed May 24th, 1871.

Circuit court of the United States, district of Louisiana.

JOHN P. TWEED
vs.
BENJAMIN F. FLANDERS, DEPUTY GENERAL agent of the Treasury Department. } No. 3899. Affidavit.

J. R. Beckwith, U. S. dist. att'y, being duly sworn, deposeth and saith: That, at the trial of this cause, and after the evidence had been closed and the jury charged, the said jurors took with them into their room the papers in the case, and the papers, or a portion of the papers, in another case between the same parties, among which papers was a deposition of the plaintiff taken by commission and not read in evidence on the trial, the said plaintiff being present and testifying orally.
31 The said jurors also took with them to said room files of the New Orleans Picayune and Price Current, from before the 10th of March, A. D. 1866, until after the 15th of May of the same year, and

retaining the same, together with the papers and deposition aforesaid, in said room during all of their deliberations on their verdict, as he verily believes.

(Signed) J. R. BECKWITH.

Sworn to and subscribed before me this 24 May, 1871.

(Signed) K. LOEW, *U. S. C.*

Rule for new trial.—Extract from minutes, Wednesday, May 24th, 1871.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

On motion of J. R. Beckwith, U. S. att'y, appearing for defendant by direction of the Treasury Department, it is ordered that the plaintiff show cause on the 29th instant, at 11 a. m., why the verdict rendered in this cause should not be set aside, and a new trial granted, on the grounds filed.

32 *Grounds for new trial.—Filed May 24th, 1871.*

Circuit court of the United States, district of Louisiana.

J. P. TWEED
vs.
B. F. FLANDERS, DEPUTY GENERAL AGENT OF the Treasury Department of the United States. } No. 3899.

On motion of J. R. Beckwith, U. S. att'y, appearing for defendant by direction of the Treasury Department, it is ordered that the plaintiff show cause on the 29th inst., at 11 a. m, why the verdict rendered in this cause should not be set aside, and a new trial granted for the following reasons among others:

1st. That the verdict is contrary to the law and the evidence in this cause.

2d. That the court erred in its charge*d* and directions given to the jury as requested by the plaintiff, and that the court erred in refusing to charge and direct the jury as prayed by the defendant, and also erred in the oral charge given to the jury in connection with the written charges asked by the defendant, whereby the jury was misdirected and led into error in the deliberation and verdict.

33 That all of said verdict except so far as it relates to the decline in cotton is unsupported by evidence, no evidence having been given to the jury in regard to insurance, clerk's and marshal's costs or attorneys fees, all that portion of said verdict being an act of legislat*ive* by the jury.

Marshal's return on the foregoing.

Received, May 25th 1871, by the U. S. marshal, and on the same day served a copy of this rule on Billings & Hughes, by handing it to E. C. Billings personally.

(Signed) S. W. REED,
D'y U. S. Marshal.

Continuance of motion in arrest of judgment.—Extract from minutes, Wednesday, May 24th, 1871.

SAME
vs. } No. 3899.
SAME.

By consent of counsel the motion in arrest of judgment is continued, to be tried at the same time as the rule for new trial.

34 *Motion and order overruled.—Extract from minutes, May 29th, 1871.*

JNO. P. TWEED
vs. } No. 3899.
B. F. FLANDERS.

The motion in arrest of judgment and the rule for a new trial in this case were called—J. R. Beckwith, for relator; J. A. Campbell and E. C. Billings for J. P. Tweed—and, after hearing the argument, for reasons orally assigned, it is ordered by the court that both motions be overruled, and that judgment be entered in accordance with the verdict.

Judgment.—Judgment docket.

United States circuit court, fifth circuit and district of Louisiana, April term 1871.

NEW ORLEANS, *Monday, May 29th*, 1871.

Court met pursuant to adjournment—present, Hon. E. H. Durell, district judge.

JOHN P. TWEED
vs. } No. 3899.
B. F. FLANDERS.

By reason of the verdict and in accordance therewith, it is ordered, adjudged and, decreed that the plaintiff, John P. Tweed, do have
35 and recover from the defendant, Benjamin F. Flanders, the sum of fifteen thousand two hundred and eighty $\frac{48}{100}$ dollars, with 5 % interest on $9,280 48 from 21 March, 1866, till paid, and costs of suit.

Judgment rendered May 29th, 1871.

Judgment signed June 3rd, 1871.

(Signed) E. H. DURELL, *Judge.*

Order.—Extract from minutes, Tuesday June 6th, 1871.

JNO. P. TWEED
vs. } No. 3899.
B. F. FLANDERS.

Ordered that the motion this day presented be argued on to-morrow, at 11 a. m., and that the parties in interest be notified thereof.

Continuance of motion.—Extract from minutes, Wednesday, June 14th, 1871.

JNO. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

By consent of counsel, the motion for a writ of supersedeas is continued indefinitely.

36 UNITED STATES OF AMERICA,
Circuit Court of the United States,
Fifth Circuit and District of Louisiana:

CLERK'S OFFICE.

I, Dominick Urban, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 35 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of John P. Tweed vs. Benj. F. Flanders, deputy gen'l ag't, &c., No. 3899 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 13 day of June, A. D. 1871.

[SEAL.] D. URBAN, *Clerk.*

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate, as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 13 day of June, A. D. 1871.

E. H. DURELL, *Judge.*

37 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or any one of you, between John P. Tweed, plaintiff, and Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States of America, defendant, No. 3899 of the docket of said circuit court, a manifest error hath happened, to the great damage of the said Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States of America, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same

at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 8th day of June, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for the District of Louisiana.

38 (Indorsed:) United States circuit court. No. 3899. Benjamin F. Flanders, deputy general agent, &c., pl'ff in error, versus John P. Tweed, def'd't in error. Writ of error. Filed June 8th, 1871. F. B. Vinot, d'y cl'k.

39 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to John P. Tweed, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States of America, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this eighth day of June, in the year of our Lord one thousand eight hundred and seventy-one.

W. B. WOODS,
Judge of U. S. Circuit Court for the 5th Circuit & District of Louisiana.

40 (Indorsed:) United States circuit court. No. 3899. Benjamin F. Flanders, deputy general agent, &c., pl'ff in error, vs. John P. Tweed, def'd't in error. Citation.

Marshal's return.

Service accepted, June 10, 1871.

BILLINGS & HUGHES,
Att'ys for Def't in Error.

(Indorsement on cover:) No. 365. Benjamin F. Flanders, deputy general agent U. S. Treasury Department, plaintiff in error, vs. John P. Tweed. Louisiana C. C. U. S. Filed 30th October, 1871.